

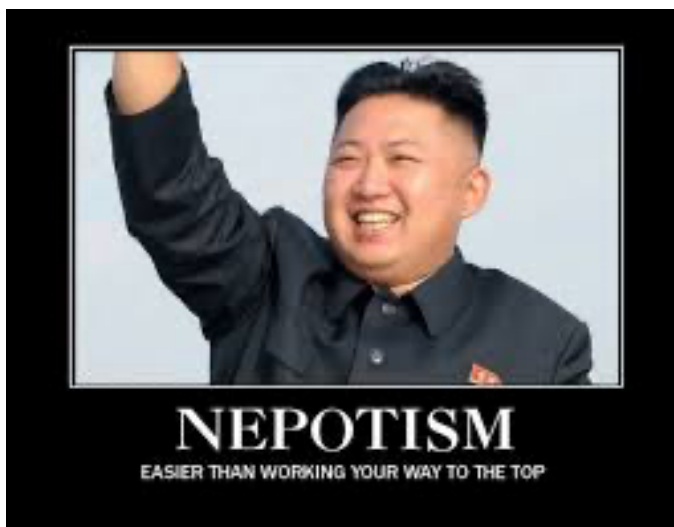


NEPOTISM AND CONFLICTS OF INTEREST

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AGENDA

1. Introduction
2. State Laws
3. Cases
4. Sample Policies
5. Best Practices
6. Conclusion

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WHAT IS NEPOTISM?

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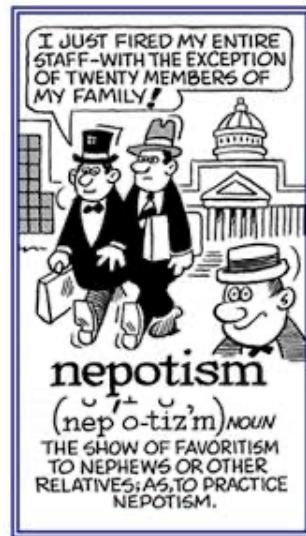
Nepotism [Noun] -

Favoritism shown to relatives or close friends by those in power

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Simply put, the definition of *Nepotism* is favoring relatives. Nepotism in the workplace occurs when employers favor relatives in making employment decisions, with little to no regard for anything but kinship.

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EXAMPLES OF NEPOTISM

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JOHN ADAMS



- ▶ Appointed his son John Quincy Adams as U.S. Minister to Prussia.
- ▶ Appointed his son-in-law to several federal posts.
- ▶ Named his brother-in-law Postmaster for Quincy, Massachusetts.
- ▶ Appointed his son's father-in-law as Superintendent of Stamps in Washington, D.C. (despite not receiving even a simple majority vote from the U.S. Senate).
- ▶ Wrote several letters discussing the need for hereditary institutions in the newly-formed country.

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ZACHARY TAYLOR



- ▶ Appointed his brother Joe as presidential aide. Joe and his family were given housing in the White House whenever Congress was in session.
- ▶ Appointed his son-in-law William Bliss as presidential aide. Bliss wrote all of President Taylor's dispatches.
- ▶ Both Joe Taylor and William Bliss were kept on active military duty status despite not performing any military duties. Both received military salaries in addition to their presidential benefits.

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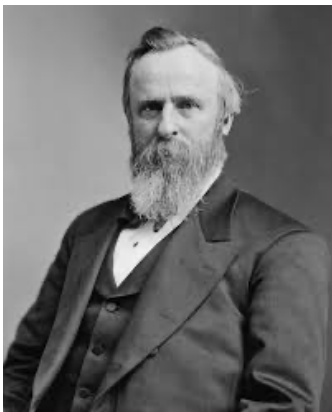
ULYSSES S. GRANT



- ▶ Appointed and employed over 40 of his relatives.
- ▶ After many of them were proven to be corrupt and abusing their power, Grant either gave them a presidential pardon for their crimes or just allowed them to stay in office.
- ▶ One brother-in-law stole from the New Orleans Customs Office. Grant reappointed him as collector of customs.
- ▶ Another brother-in-law worked at the White House and frequently sold insider information without being punished.
- ▶ Prior to being elected president, Grant got President Andrew Johnson to appoint his son Fred, a failing student, to West Point. Fred graduated last in his class and was notorious for bullying the first black student to attend West Point.

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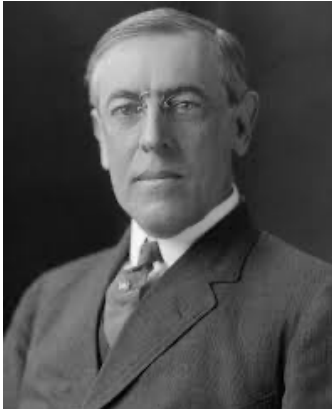
RUTHERFORD B. HAYES



- ▶ Appointed his son Webb to serve as his secretary while he was the Governor of Ohio.
- ▶ Webb continued to work for his father in the White House. He served as both a bodyguard and as his father's right-hand man. Webb did the work of a modern-day Chief of Staff.

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WOODROW WILSON



- ▶ Wilson's Secretary of the Treasury, William McAdoo, married Wilson's daughter a year after his appointment. McAdoo offered to resign, but Wilson insisted that McAdoo continue as Treasury Secretary.
- ▶ After the U.S. entered World War I in 1917, Wilson left many of his presidential responsibilities to McAdoo.

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FRANKLIN D. ROOSEVELT



- ▶ Appointed his son James as his secretary in 1937.
- ▶ James and FDR's son Elliot attended important World War II-era conferences.
- ▶ FDR's daughter Anna moved into the White House in 1943 and basically served as his First Lady for the last two years of his administration.

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JOHN F. KENNEDY



- ▶ Appointed his brother Robert as Attorney General.
- ▶ Robert's appointment is the reason we have 5 U.S.C. § 3110, which bars the President of the United States from giving his or her relatives any position as a federal employee.

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BILL CLINTON



- ▶ Named his wife Hillary as chair of a health care reform task force.
- ▶ Caused a legal challenge as to whether her appointment violated 5 U.S.C. § 3110.
- ▶ A federal appeals court ended up ruling that the statute did not apply to White House employees, thus setting the precedent for today's presidential familial involvement.

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GEORGE W. BUSH

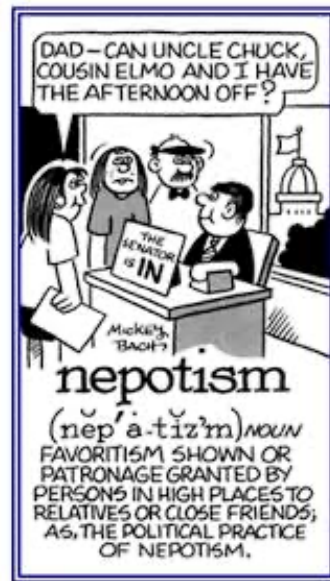


- ▶ Appointed family members of his supporters to government positions.
- ▶ Appointed Senator Strom Thurmond's 28-year-old son U.S. Attorney for South Carolina.
- ▶ Appointed Secretary Colin Powell's son as Chairman of the F.E.C.
- ▶ Appointed Justice Antonin Scalia's son as the Justice Department's chief labor attorney.
- ▶ Appointed Senator Mitch McConnell's wife Elaine Chao as Secretary of Labor.
- ▶ Appointed Vice President Richard Cheney's daughter Elizabeth Cheney as Deputy Assistant Secretary of State.
- ▶ Appointed Elizabeth Cheney's husband as Chief Counsel for the Office of Management and Budget.

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STATE LAWS AND POLICIES

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UTAH'S ANTI-NEPOTISM STATUTE - U.C.A. §§ 52-3-1 TO 52-3-4

- ▶ Definition of Relative (U.S.C. § 52-3-1(1)(d)):
 - ▶ Father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, uncle, aunt, nephew, niece, grandson, granddaughter, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in law, son-in-law, daughter-in-law.

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UTAH'S ANTI-NEPOTISM STATUTE - U.C.A. §§ 52-3-1 TO 52-3-4 (CONTINUED)

- ▶ No public officer may employ, appoint, or vote for or recommend the appointment of a relative in or to any position or employment, when the salary, wages, pay, or compensation of the appointee will be paid from public funds and the appointee will be directly supervised by a relative.
- ▶ Exceptions:
 - ▶ The appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of his compliance with civil service laws or regulations, or merit system laws or regulations.
 - ▶ The appointee will be compensated from funds designated for vocational training.
 - ▶ The appointee will be employed for a period of 12 weeks or less.
 - ▶ The appointee is a volunteer as defined by the employing entity.
 - ▶ The chief administrative officer determines that the appointee is the only or best person available, qualified, or eligible for the position.

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UTAH'S ANTI-NEPOTISM STATUTE - U.C.A. §§ 52-3-1 TO 52-3-4 (CONTINUED)

- ▶ No public officer may directly supervise an appointee who is a relative when the salary, wages, pay, or compensation of the relative will be paid from public funds.
- ▶ Exceptions
 - ▶ The relative was appointed or employed before the public officer assumed his position, if the relative's appointment did not violate the provisions of this chapter in effect at the time of his appointment.
 - ▶ The appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of his compliance with civil service laws or regulations, or merit system laws or regulations.
 - ▶ The appointee will be compensated from funds designated for vocational training.
 - ▶ The appointee will be employed for a period of 12 weeks or less.
 - ▶ The appointee is a volunteer as defined by the employing entity.
 - ▶ The appointee is the only person available, qualified, or eligible for the position.
 - ▶ The chief administrative officer determines that the public officer is the only person available or best qualified to perform supervisory functions for the appointee.

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UTAH'S ANTI-NEPOTISM STATUTE - U.C.A. §§ 52-3-1 TO 52-3-4 (CONTINUED)

- ▶ No appointee may accept or retain employment if he is paid from public lands, and he is under the direct supervision of a relative.
- ▶ Exceptions
 - ▶ The relative was appointed or employed before the public officer assumed his position, if the relative's appointment did not violate the provisions of this chapter in effect at the time of his appointment.
 - ▶ The appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of his compliance with civil service laws or regulations, or merit system laws or regulations.
 - ▶ The appointee will be compensated from funds designated for vocational training.
 - ▶ The appointee will be employed for a period of 12 weeks or less.
 - ▶ The appointee is a volunteer as defined by the employing entity.
 - ▶ The appointee is the only person available, qualified, or eligible for the position.
 - ▶ The chief administrative officer determines that the appointee's relative is the only person available or qualified to supervise the appointee.

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UTAH'S ANTI-NEPOTISM STATUTE - U.C.A. §§ 52-3-1 TO 52-3-4 (CONTINUED)

- ▶ Each day a relative is retained in office by any public official shall be regarded as a separate offense.
- ▶ Any person violating the statute is guilty of a misdemeanor.
- ▶ Exceptions for towns and rural areas:
 - ▶ The statute does not apply to employment of uncles, aunts, nephews, nieces, or cousins in town (population less than 1,000).
 - ▶ The statute does not apply to the employment of a relative if:
 - ▶ Fewer than 3,000 people live within 40 miles of the primary place of employment.
 - ▶ The job opening has had reasonable public notice.
 - ▶ The relative is the best qualified candidate for the position.

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UTAH CASES

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BACKMAN V. BATEMAN, 263 P.2D 561 (UTAH 1953)

- ▶ School principal and public school teacher brought original proceedings in Utah Supreme Court against the State Superintendent of Public Instruction and Boards of Education to test rights of principal and teacher to continue in their employment under the Anti-Nepotism Statute.
 - ▶ Both the principal and the teacher had been employed in their respective schools for years when their brothers were elected to the school boards.
 - ▶ Utah Attorney General's Office provided an opinion that the principal and teacher could not be employed under the Anti-Nepotism Statute.
- ▶ The Utah Supreme Court held that the Statute was unconstitutional in so far as it affected the principal and the teacher, who had been employed many years before their brothers were elected to the school boards, and who would forfeit their interests in teachers' retirement funds, to which they had contributed, if they should lose their positions.

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BAUMGAERTEL V. SALT LAKE COUNTY, 560 P.2D 325 (UTAH 1977)

- ▶ Taxpayers brought action against county challenging hiring of wives and daughters-in-law of justices of the peace to serve as court clerks in the same precinct and court in which the related justices presided.
- ▶ Utah Supreme Court held that the hirings were barred by constitutional provision and the Anti-Nepotism Statute, even though the hirings were done by the board of county commissioners and not by the court or the judges themselves

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YOUREN V. TINTIC SCHOOL DISTRICT, 2004 UT APP 33, 86 P.3D 771

- ▶ Plaintiff argued, in part, that the trial court erred by dismissing her second cause of action based upon its determination that the Anti-Nepotism Statute did not create a private cause of action.
- ▶ Utah Court of Appeals held that the Anti-Nepotism Statute did not specifically provide for a private right of action, but only a criminal penalty for violation of its provisions. Accordingly, the trial court's ruling was correct.

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SAMPLE POLICIES (BOTH SIMPLE AND ELABORATE)

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SIMPLE STATEMENTS

- ▶ “All County employees shall comply with applicable state laws as per Utah Code, Unannotated 52-1-3 [sic], Employment of Relatives Prohibited.”
- ▶ “It shall be the policy of the County to comply fully with the provisions of Sections 52-3-1 and 52-3-2, Utah Code Annotated, prohibiting employment of relatives. Any public officer who violates the provisions of Section 52-3-1 or 52-3-2, Utah Code Annotated, is guilty of a misdemeanor (52-3-3).”
- ▶ “No public officer may directly supervise an appointee who is a relative when the salary, wages, pay, or compensation of the relative will be paid from public funds, except as allowed by State law.”
- ▶ It is the policy of the County to comply fully with the anti-nepotism clause as stated in the Utah Code.”

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ELABORATE STATEMENTS (EXAMPLE #1)

- ▶ It is the policy of the County to comply with Section 52-3-1, et seq., Utah Code Annotated, 1953 as amended, prohibiting employment of relatives.
- ▶ As used in this section:
 - ▶ “Appointee” means an employee whose salary, wages, pay, or compensation is paid from public funds.
 - ▶ “Public officer” means a person who holds a position that is compensated by public funds.
 - ▶ “Relative” means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- ▶ No public officer may employ, appoint, or vote for or recommend the appointment of a relative in or to any position of employment, when the salary, wages, pay, or compensation of the appointee will be paid from public funds and the appointee will be directly supervised by a relative, except as follows:
 - ▶ the appointee is eligible or qualified to be employed by the county as a result of complying with civil service laws or regulations, or merit system laws or regulations;
 - ▶ the appointee will be compensated from funds designated for vocational training;
 - ▶ the appointee will be employed for a period of 12 weeks or less;
 - ▶ the appointee is a volunteer as defined by the county;
 - ▶ the appointee is the only person available, qualified, or eligible for the position; or
 - ▶ the county commission determines that the public officer is the only person available or best qualified to perform supervisory functions for the appointee.

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ELABORATE STATEMENTS (EXAMPLE #1) (CONTINUED)

- ▶ No public officer may directly supervise an appointee who is a relative when the salary, wages, pay, or compensation of the relative will be paid from public funds, except as follows:
 - ▶ the relative was appointed or employed before the public officer assumed his position, if the relative's appointment did not violate the provisions of Section 52-3-1 et seq., Utah Code Ann., in effect at the time of the appointment;
 - ▶ the appointee is eligible or qualified to be employed by the county as a result of complying with civil service laws or regulations, or merit system laws or regulations;
 - ▶ the appointee will be compensated from funds designated for vocational training;
 - ▶ the appointee will be employed for a period of 12 weeks or less;
 - ▶ the appointee is a volunteer as defined by the county;
 - ▶ the appointee is the only person available, qualified, or eligible for the position; or
 - ▶ the county commission determines that the public officer is the only person available or best qualified to perform supervisory functions for the appointee.
- ▶ When a public officer supervises a relative, the public officer shall make a complete written disclosure of the relationship to the county commission, and the public officer who exercises authority over a relative may not evaluate the relative's job performance or recommend salary increases for the relative.
- ▶ No appointee may accept or retain employment if the appointee is paid from public funds and is under the direct supervision of a relative, except as follows:
 - ▶ the relative was appointed or employed before the public officer assumed his position, if the relative's appointment did not violate the provisions of Section 52-3-1 et seq., Utah Code Ann., in effect at the time of the appointment;
 - ▶ the appointee is eligible or qualified to be employed by the county as a result of complying with civil service laws or regulations, or merit system laws or regulations;
 - ▶ the appointee is the only person available, qualified, or eligible for the position;
 - ▶ the appointee is to be compensated from funds designated for vocational training;
 - ▶ the appointee is employed for a period of 12 weeks or less;
 - ▶ the appointee is a volunteer as defined by the county; or
 - ▶ the county commission has determined that the appointee's relative is the only person available or qualified to supervise for the appointee.

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ELABORATE STATEMENTS (EXAMPLE #2)

- ▶ In order to avoid favoritism and the appearance of impropriety, the County shall restrict the hiring of relatives of current County employees, appointees, and elected officials. This policy establishes the parameters under which such relatives may be hired.
- ▶ This policy applies to all County employees and elected officials, and ensures strict adherence to Equal Employment Opportunity guidelines.
- ▶ Employees of Elected Officials shall not hire or possess direct supervisory authority over relatives as stated in this policy.
- ▶ Employees or Elected Officials shall not make employment decisions regarding relatives in the employee's immediate chain of supervision.
- ▶ Exceptions- An exception to this policy requires the prior written approval of the HR Director and the County Commission. An exception may be granted if one of the following criteria is met:
 - ▶ The relative will be employed for four (4) weeks or less; or
 - ▶ The relative is the only applicant qualified or eligible for the position.

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ELABORATE STATEMENTS (EXAMPLE #2) (CONTINUED)

- ▶ If because of marriage, promotion, reorganization, or other reasons, a conflict with this policy exists, the matter shall be reviewed by the HR Director, the County Attorney, and the County Commission. In the instance of a conflict, several options may be presented:
 - ▶ One of the family members must resign within a reasonable period of time to be established between the HR Director and the employee.
 - ▶ If a position is open in another department for which one of the employees is qualified, s/he has right of first refusal for the position. The refusal must be in writing and signed by both the employee and the HR Director.
- ▶ The list of relatives (natural or adopted) impacted by this policy: parent, parent-in-law, spouse, child, sibling, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparents, grandparents-in-law, or grandchildren.

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BEST PRACTICES AND RECOMMENDATIONS

- ▶ Have a **CONSISTENT** County-wide policy.
- ▶ **INVOLVE** the HR Department and the County Attorney's Office.
- ▶ **TRAIN** Elected Officials, Managers, and Supervisors about the policy.
- ▶ **EDUCATE** Employees about the policy (and have frequent refresher courses).
- ▶ Don't be afraid to **ASK FOR HELP**; you will probably need it sooner than you think.

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CONCLUSION

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THANK YOU!



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